IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.126 OF 2006

Nairuddin B. Ajani ...Applicant

Versus

Habib Lalji & Anr. ...Respondents

Shri Ganesh Bhujbal i/by Meghashyam Kocharekar for the Applicant.

Shri S.V.More, A.P.P for the State.

CORAM : A. S. OKA, J.

DATE : DECEMBER 06, 2006.

P.C.:

1. On 23rd January, 2006 this court issued notice to the Respondents for final disposal at admission stage. Office noting shows that notice is duly served to the first Respondent. None appears for the first Respondent. The learned Advocate for the Applicant states that the complaint filed by the first Respondent is still pending and it is not decided till today.

2. The Applicant has been arraigned as the accused No.2 in the complaint filed by the first Respondent under section 138 read with section 142 of the Negotiable Instruments Act, 1881. The learned Magistrate issued process on the said complaint on 12th October, 2001. Being aggrieved by the said order, the

Applicant preferred a revision Application before the Sessions Court. By Judgment and Order dated 12th September, 2005, the learned Additional Sessions Judge has rejected revision Application.

3. The learned Advocate for the Applicant submitted that the complaint filed by the first Respondent is on the basis of the cheques issued by the accused No.1 which is a limited company. He submitted that even if it is assumed that section 141 of the said Act of 1881 is invoked by the first Respondent, there are no material averments made in the complaint. He submitted that the cheques on the basis of which the complainant has been filed have been issued in the year 2001. He invited my attention to a certified true copy of Form No.32 filed with the Registrar of Companies which shows that from 18th September, 1999 the Appellant ceased to be a Director of the accused No.1-Company as a result of resignation. He, therefore, submitted that order issuing process deserves to be quashed as against the Applicant.

4. I have perused the copy of the complaint annexed to this Application. It appears that the Applicant was arraigned as an accused in his capacity as a Director of the accused No.1. Section 141 of the

Negotiable Instruments Act, 1881 provides that if the person committing offence under section 138 is a company, every person who, at the time the offence was committed, was incharge of and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence. The Apex Court had an occasion to consider the provision of section 141 of the said Act of 1881 in the case of S.M.S.Pharmaceuticals Limited Vs. Neeta Bhalla & Another [(2005)8 Supreme Court Cases page 89]. In paragraph No.20 of the said decision, a bench of the Apex Court has answered the questions referred to it. The conclusions of the Apex Court summarised in clauses (a) and (b) of paragraph No.20 of the said decision read thus:

> "(a) It is necessary to specifically aver in a complaint under section 141 that at the time the offence was committed, the person accused was incharge of, and responsible for the conduct of business of the company. This averment is an essential requirement of section 141 and has to be made in a complaint. Without this averment being made in a complaint, the

requirements of section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under section 141 of the Act. A director in a company cannot be deemed to be incharge of and responsible to the company for conduct of its business. The requirement of section 141 is that the person sought to be made liable should be incharge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases".

The view taken by the Apex Court in the case of S.M.S.Pharmaceuticals (supra) has been reiterated by the Apex Court in the recent Judgment in the case of Sabitha Ramamurthy and Another Vs. R.B.S.Channabasavaradhya (2006 SCCL.COM Page 669).

5. On perusal of the complaint in this case, it is obvious that the averments constituting essential requirements of section 141 have not been made in the complaint. No such assertions have been made in the verification statement of the first Respondent.

6. Thus, the net result is that order of process could not have been issued as against the Applicant.

7. Hence, I pass the following order:

(i) The order dated 12th October, 2001 passed by the learned Additional Chief Metropolitan Magistrate, 9th Court, Mumbai by which process was issued on a complaint bearing C.C.No.104/S/2002 is quashed and set aside in so far as the Applicant is concerned.

(ii) Application is partly allowed in above terms.

(iii) It is made clear that the complainant will proceed as against the other accused in accordance with law.

JUDGE